# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

CONNIE M. CAMERON,

Defendant-Appellee.

UNPUBLISHED
August 26, 2003

No. 246209
Saginaw Circuit Court
LC No. 02-022282-FH

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

The prosecutor appeals by leave granted the order denying amendment to the information. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Included in the charges against defendant were three counts of second-degree child abuse, MCL 750.136b(3), for her aggressive driving with three unrestrained children in her vehicle. The district court declined to bind over defendant on the child abuse charges because it did not believe that defendant's actions were likely to cause serious physical or mental harm to the children. The circuit court denied plaintiff's motion to amend the information, and we granted the prosecutor's application for leave to appeal.

A magistrate's ruling that alleged conduct falls within the scope of a criminal statute is a question of law reviewed for error, and a decision to bind over a defendant is reviewed for abuse of discretion. *People v Drake*, 246 Mich App 637, 639; 633 NW2d 469 (2001). To bind over a defendant, the magistrate must find that sufficient evidence was presented to establish that a felony has been committed, and there is probable cause for charging defendant. *Id.* at 640; MCL 766.13. When the evidence conflicts or raises a reasonable doubt concerning guilt, there are questions for the trier of fact, and the defendant should be bound over. *People v Carlin (On Remand)*, 239 Mich App 49, 64; 607 NW2d 733 (1999).

Pursuant to MCL 750.136b(3)(b), a parent or guardian is guilty of second-degree child abuse if she "knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results." The statute does not define the term "likely" or indicate how to determine if an act is "likely to cause serious" harm to a child. In the civil context, in discussing the term the Supreme Court quoted Black's Law Dictionary (6th ed), p 925:

> Likely is a word of general usage and common understanding, broadly defined as of such nature or so circumstantial as to make something probable and having better chance of existing or occurring than not. [*Moll v Abbott Laboratories,* 444 Mich 1, 22; 506 NW2d 816 (1993)].

On the other hand, the word "possible" means "[c]apable of existing, happening, being, becoming or coming to pass; feasible, not contrary to nature of things; neither necessitated nor precluded; free to happen or not; contrasted with impossible." *Moll, supra*.

The prosecutor first argues that the magistrate erred in determining that second-degree child abuse is a general intent crime. In this case, we need not determine whether the statute requires general or specific intent. Even if second-degree child abuse were a general intent crime, the evidence did not show that defendant's conduct was *likely* to cause serious harm to the children. Defendant backed her vehicle into an intersection in a residential area at speed, turned and ran into complainant in his driveway. While it is *possible* the children could have suffered injuries, there is no indication that it was more probable than not that this would happen under the facts in this case. Moreover, there was no evidence to show that the conduct was likely to cause *serious* injuries. Accordingly, we conclude that the magistrate did not abuse his discretion in finding that the evidence did not establish probable cause to believe that defendant committed second-degree child abuse.

Affirmed. We lift the stay of proceedings.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens